

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Darren Simmons,

Petitioner,

v.

Warden John Pate,

Respondent.

No. 5:13-cv-2120-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending the Court grant Respondent’s motion for summary judgment. (Dkt. No. 30). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Petitioner, a state prisoner proceeding pro se, filed this petition pursuant to 28 U.S.C. § 2254. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this matter was automatically referred to a Magistrate Judge for pretrial handling. Respondent then filed a motion for summary judgment. (Dkt. No. 17). Petitioner then filed a response in opposition to the motion. (Dkt. No. 22). The Magistrate Judge then issued the present R&R. (Dkt. No. 30). Petitioner failed to file timely objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made.

Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After review of the record and the R&R, the Court finds the Magistrate Judge applied sound legal principles to the facts of this case and therefore adopts the R&R as the order of the Court. The Court agrees that Petitioner has failed to exhaust his state court remedies as required by 28 U.S.C. § 2254(b)(1).

Conclusion

As set forth above, the Court adopts the R&R as the order of the Court. (Dkt. No. 30). Accordingly, the Court grants Respondent’s motion for summary judgment. (Dkt. No. 17).

AND IT IS SO ORDERED.



Richard Mark Gergal
United States District Court Judge

April 1, 2014
Charleston, South Carolina